IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10575 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMLESH RAMUBHAI GAMIT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10575 of 2004

MR CHETAN K PANDYA for Petitioner No. 1

MRS HB PUNANI, AGP for Respondents No.1-3

RULE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 10/01/2005

ORAL JUDGEMENT

1. By way of filing this petition under Article 226 of the Constitution of India, the petitioner Sandhyaben Kamleshbhai Gamit has challenged the detention order passed by the District Magistrate, Surat on 17.06.2004 against the detenu - Kamlesh Ramubhai Gamit, husband of

petitioner - Sandhyaben, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ["PASA Act" for short]. The detenu - Kamlesh Ramubhai Gamit was declared as bootlegger and was detained in pursuance of the detention order from 01.06.2004.

2. The ground of detention as placed on record, reveals that two crimes came to be registered against the detenu under Sections 66(1)B, 65-AE, 116(2) and 81 of the Bombay Prohibition Act, one at Valod Police Station on 25.09.2003 and second at Mandvi Police Station on 09.04.2004. In both the above cases, the detenu was found in possession of illegal foreign liquor. In first case, 55 bottles, while in second case 1200 bottles, taking into consideration the investigation papers in both the above said crimes registered against the detenu, the detaining authority reached to a subjective satisfaction that the detenu was storing, transporting and selling illegal foreign liquor and thereby life style and standard of life of the persons and public health was affected. The detaining authority also concluded that the said activities of the detenu was prejudicial to the maintenance of public order. The detaining authority also took into consideration the fact that the steps against the detenu under general law are not found efficient to cure illegal activity of the detenu, because after releasing on bail the detenu continues his illegal activity. It was also considered that an externment proceedings would take time and would not be useful to prevent illegal activity of the detenu immediately. The detaining authority, according to him had no other alternative, except to pass an order of detention under the PASA Act and hence, as aforesaid, the order of detention came to be passed on 17.06.2004 which is under challenge in this petition.

3. Learned advocate Mr.C.K.Pandya, for petitioner and learned AGP Mrs.H.B.Punani, for respondents No.1 and 3 were heard at length.

4. The order of detention came to be challenged by the petitioner on various grounds. Mainly, it was urged that the order of detention is vitiated because, a subjective satisfaction of the detaining authority as to disturbance to the maintenance of public order, is not based on credible or cogent material. It was contended that mere registration of crimes under the Bombay Prohibition Act would not by itself lead to inference that the detenu was engaged in anti social activities prejudicial to the maintenance of public order. Learned

advocate for petitioner has relied upon some decisions on this aspect. It was also urged that the second crime was registered on 09.04.2004, the detenu was arrested on the same day and was released on bail on 10.04.2004, while order of detention came to be passed on 17.06.2004, after delay of about two months. It was urged that the order of detention is vitiated for the ground of delay as well. It was urged that the order under challenge is required to be quashed and set aside.

5. On the other hand, learned AGP Mrs.H.B.Punani has contended that the detaining authority has relied upon investigating papers of two cases registered under Bombay Prohibition Act against the detenu which material discloses storing, transporting and selling illegal foreign liquor so as to prejudicial to the public health and thereby disturbing maintenance of public order. It was contended that there cannot be any other cogent material other then relied upon by the detaining authority to reach a subjective satisfaction that the detenu was involved in bootlegging activity. It was urged that the application, therefore, is required to be dismissed.

6. Considering the rival contentions and going through the record in entirety as available with this Court, the issue for determination arises whether there was cogent and credible material before the detaining authority to reach to a subjective satisfaction that the bootlegging activity of the detenu was prejudicial to the maintenance of public order.

7. The facts of this case is covered by the decision of the Division Bench of this Court, in Letters Patent Appeal No.223 of 2000 in Special Civil Application No.554 of 2000 as decided on 22.08.2000, wherein similar circumstances, after considering the decisions of the Apex Court in the matter of Kanuji S. Zala Vs. State of Gujarat and others, reported in 1999 (2) G.L.H. 415, Piyush Kantilal Mehta Vs. Commissioner of Police, reported in AIR 1989 SC 491, Om Prakash Vs. Commissioner of Police and others, reported in JT 1989 (4) SC 177 and Rashidmiya alias Chhava Ahmedmiya Shaikh Vs. Police Commissioner, Ahmedabad and another, reported in AIR 1989 SC 1703, the Division Bench of this Court has observed in paragraphs No.4 and 5 as under:-

> "4. In this case of K.S. Zala v. State of Gujarat (supra), the Supreme Court also considered three earlier decisions in the case of Piyush Kantilal Mehta (supra); Omprakash (supra);

and Rashidmiya (supra) and observed in para 4 that in none of the three cases relied upon by the learned counsel, the point whether public order can be said to have been disturbed on the ground that the activity of the detenu was harmful to the public health arose for consideration and that the detaining authority has not recorded such satisfaction; moreover in these three cases the detaining authority has referred to some incidents of beating but there was no material to show that as a result thereof even tempo of public order was disturbed, whereas in the case before the Supreme Court in the case of K.S. Zala v. State of Gujarat (supra) the detaining authority has specifically stated in the grounds of detention that selling of liquor by the petitioner and its consumption by the people of that locality was harmful to their health. It was also stated that the statements of the witnesses clearly show that as a result of violence resorted to by the petitioner even tempo of public life was disturbed in those localities for some time. That material on record clearly shows that the members of public of those localities had to run away from there or to go inside their houses and close their doors.

5. If we examine the present case on the anvil of the test which has been applied by the Supreme Court in the case of K.S. Zala v. State of Gujarat (supra), i.e. with regard to the presence of credible material and as to how the detaining authority has made the mention against the appellant being an obstruction to the public health and public order, we find that in the instant case so far as the statements of the witnesses which were recorded with regard to unregistered cases, that ground has been rejected by the learned Single Judge himself. It is, of course, true that after narrating the particulars of the criminal cases, the detaining authority has mentioned that the activities of the appellant were an obstacle to the public health and public order, but this bald observation cannot be taken to be decisive so as to arrive at the satisfaction that the activities of the petitioner were prejudicial to the public order or public health and that tempo of public life was disturbed. No observation made in any part of the judgment can be read in isolation and bereft the context. The judgment is to be read

as a whole and even the observations which have been made by the Supreme Court in para 6 of the judgement are to be considered in light of the earlier observations made in para 5 where presence of credible material before the detaining authority has been insisted upon. Thus, litmus test to find out as to whether it is a case of breach of public order or breach of public health is concerned, credible material has to be there. In the case of K.S. Zala before the Supreme Court, the detaining authority had also relied upon the statements of the witnesses so as to show that violence resorted to by the petitioner in that case had disturbed the even tempo of public life and the material on record had shown that members of the public of those localities had to run away from there and to go inside their houses and to close their doors. No such fact situation has been mentioned in the present case and the ground with regard to the statements of the three witnesses has been rejected by the learned Single Judge himself and it ha been held that there had been violation or infringement of the petitioner's right against such statements. In this view of the matter whatsoever said by the three witnesses with regard to unregistered cases and with regard to the three incidents referred to hereinabove, it cannot be considered to be the material germane for the purpose of consideration of the threat to the public health and public order. Thus, the only material which remains is the registered criminal cases and that by itself cannot be said to be a material for the purpose of holding that the appellant's activities had become a threat to the public order and public health. Necessary material in this regard is totally wanting in the body of the detention order itself. In large number of cases, the Supreme Court has considered that involvement in bootlegging activities even if coupled with violence does not amount to threat to public order or public health. The mere mention of allegations unless they are supported by any material cannot be said to be material germane for the purpose of arriving at the satisfaction with regard to breach of public order or public health and we find that after giving particulars of criminal cases, the detaining authority by including certain allegations, not supported by any credible material has simply observed that the appellant's

> activities were an obstacle to the public health and public order. In this view of the matter keeping in view the observations made by the Supreme Court in the case of K.S. Zala v. State of Gujarat (supra) itself in paras 4 and 5, we do not find that it can be held to be a case of breach of public health and public order. Learned Counsel for the appellant has also argued several other points before us, but we do not find it necessary to go into those grounds. It may be mentioned that it was not a case of breach of public order or public health and it was not argued before the learned Single Judge. Even if that be so, in such matters, the point which arises on the face of the facts of the case by the body of the order itself, which does not require further investigation of the facts, can certainly be allowed to be raised and we allow learned counsel for the appellant to raise this point and find that this point is not without substance. The impugned order passed by the learned single Judge upholding the detention order therefore cannot be said to be in consonance with the settled position of law. The detention order deserves to be quashed and set aside on this ground alone. We, therefore, do not go into other grounds which were raised on behalf of the appellants."

8. In the present case also, admittedly, the only material which the detaining authority took into consideration is the fact of two criminal cases registered against the detenu under the Bombay Prohibition Act. Needless, it is observed that to find out as to whether a given case is a case of breach of public order or breach of public health, the detaining authority must take into consideration credible and cogent material. Merely, registration of the cases under Bombay Prohibition Act against the detenu is not material to infer that the detenu was engaged in illegal activity prejudicial to the public health and maintenance of public order. The material, therefore, relied upon by the detaining authority cannot be considered to be material germane for the purpose of consideration of the threat to the public health and public order. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

9. In the result, in view of the above discussion, this petition is allowed. The detention order passed by the District Magistrate, Surat against the detenu Kamlesh

Ramubhai Gamit on 17.06.2004 is quashed and set aside. The detenu - Kamlesh Ramubhai Gamit is hereby ordered to be set at liberty forthwith, if he is not required to be detained for any other purpose. Rule made absolute. Direct service is permitted.

(J. R. VORA, J.)

(vijay)